

From: Michael Warburton [mailto:mwarburton@jps.net]
Sent: Monday, January 03, 2005 4:20 PM
To: CalEPA Environmental Justice Program
Subject: EJ Action Plan Comments

Public Trust Alliance
A Project of the Resource Renewal Institute
Rm. 290, Bldg. D
Fort Mason Center
San Francisco, CA 94123
January 3, 2005

RE: Comments on Environmental Justice Action Plan

Tam Doduc
Deputy Secretary for Environmental Quality
California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812

EnvJustice@calepa.ca.gov

Dear Ms. Doduc,

Thanks for the extension of the public comment period for the phase I activities for the EJ Action Plan. The Public Trust Alliance works with many organizations to strengthen their advocacy positions for socially just and ecologically sustainable development through increased use of the Public Trust Doctrine. The obligations of public trustees often come into sharpest focus in the context of environmental justice initiatives that involve California's most vulnerable communities. These groups depend on public rights of access to shared resources to a far greater extent than their wealthier neighbors, who have tended to protect their interests through the enforcement of private property rights. Clean air and water have been recognized as particularly important public resources since ancient times. Enhanced protections for public uses of them have been protected by our legal institutions ever since. Many public agencies, including CalEPA BDO's, owe specific public trust duties to all Californians, of both present and future generations, regardless of their race, economic or political power. Our special emphasis on this legal framework makes us deeply interested in the CalEPA effort to make environmental justice a more meaningful part of the implementation of State environmental policy.

We were very encouraged by former Secretary Tamminen's November 8 introduction of the Action Plan at the Public Workshop in Sacramento, when he spoke of environmental justice as a major unfinished social justice movement for the 21st Century. He added that this challenge could probably be best engaged by public agencies in their role as trustees for the public, and he recognized that this was certainly not a new idea in law or policy implementation. The four goals of the Action Plan: enhancing

public capacity to listen and respond to public concern, developing better methodologies to recognize and mitigate cumulative impacts, better integrating environmental justice into more general environmental protection initiatives, and building a reasonable framework within which prudent precautionary action can be taken before public resources are lost to irreversible processes- all can be clearly integrated and performed within the public trust framework. The Supreme Court of Hawaii, for instance, recently recognized the “precautionary principle” as a brief restatement of the traditional obligations of public trustees in protecting particularly important public resources.

With regard to the now clearly recognized problem of cumulative impacts, it is far too late to continue pretending that industrial chemicals enter our shared water and air individually. Chemical wastes are always added to those already circulating in our atmosphere and waters from other processes. They often interact in complex ways and collectively diminish the assimilative capacity of these resource systems. The particular challenge in environmental justice communities is that many harmful industrial processors are already located within short distances of their homes.

In the case of California water, not only are industrial chemicals and naturally occurring substances introduced and circulated in linked systems, but large portions of natural flows are taken out of their natural courses and redirected elsewhere for a variety of uses. Up until this point, most of the energy behind “pollution” regulation has been concentrated on chemicals added to shared resource systems. But several severe environmental justice problems are the direct result of the diversion of water for hydro-electric and agricultural purposes. Native Tribes who have depended on traditional access to salmon fisheries that have been decimated by water storage and conveyance projects have suffered genocidal impacts with little public discussion of whether current patterns of water allocation are actually in the public interest. Many of the long term contracts for water use are presently being renewed and dams are being relicensed. The Federal Administration has been changing the rules regarding who is allowed to participate in the renewal processes and environmental justice and long term public interests are being ignored. We hope that CalEPA BDO’s will move toward mitigation of these unfair impacts as well as more familiar industrial behavior.

Although the tone of this letter might seem discouraging, we are actually optimistic about the potential of the various pilot projects to help our regulatory agencies design more effective approaches to measuring and recommending future action. None of us can have the luxury of starting from a different place and we like the basic contours of the EPA plan for designing better approaches to mitigating longstanding environmental justice problems. Program goals seem closely aligned with familiar principles institutionalized in California’s Public Trust Doctrine and we look forward to working with you to help this project live up to its potential.

Sincerely,
Michael Warburton
Executive Director
Public Trust Alliance